

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**MGM GRAND HOTEL, LLC d/b/a
MGM GRAND HOTEL & CASINO**

Case No. 28-RC-225344

**MGM GRAND HOTEL, LLC's EMERGENCY MOTION TO RESCHEDULE
OBJECTIONS HEARING**

The Regional Director set a hearing on the Employer's Objections to the Election for Thursday, September 20, 2018. On September 12, 2018, the Employer served the Union and several individuals with Subpoenas Duces Tecum. Among the individuals subpoenaed were two supervisors whose conduct lies at the core of the Employer's objections: Ernest Mutter and Rovaric Fajardo. The undersigned was informed on Friday night, well after close of business, that Mr. Fajardo intentionally destroyed a substantial amount of documents after he received the subpoena. Specifically, he deleted text messages. The undersigned was informed at the same time that Ernest Mutter had informed Mr. Fajardo that he too had destroyed documents after the Employer met with Mr. Mutter to investigate prior to filing its objections, and after the Employer advised Mutter to preserve such documents. The documents would be responsive to the Employer's subpoena.

The Employer is in the process of attempting to recover the communications destroyed by Mr. Fajardo, but that process cannot be completed prior to the hearing. Similarly, if Mr. Mutter in fact destroyed responsive documents, the hearing should not proceed until the Employer has had the opportunity to seek compliance with the subpoena and obtain the documents he may have destroyed. His conduct is the principal issue, and he cannot testify as a witness or be fairly cross-examined without the documents.

The destruction of these documents significantly interferes with the Employer's ability to prepare its case. Neither an adverse inference or other remedy would cure the spoliation because the evidence of the underlying conduct which tainted the results of the election is not otherwise discoverable. Because the Region has informed the undersigned that the Employer must also use the hearing to establish the predicate facts for the unfair labor practice charge the Employer filed against the Union, the inability to obtain evidence of agency from Mutter and others is prejudicial and denies the Employer due process.

Finally, the Employer also subpoenaed Teresa Ramirez for documents and testimony. Ramirez has left the country. She is not scheduled to return until after the hearing begins. She has not responded to the Employer's request for assurance that she will comply with the subpoena.

Accordingly, the Employer requests that the Regional Director reschedule the objections hearing to next Wednesday, September 26, 2018, so that 1) the Employer has a fair opportunity to recover the destroyed documents, 2) the parties have a fair opportunity to review documents that they have both subpoenaed, 3) the Region can initiate enforcement proceedings regarding the Mutter subpoena if necessary. There is good cause for doing so. Individuals have a duty to preserve documents. Due process requires it. This request is made in good faith and not for purposes of delay. The undersigned contacted the Union's counsel for her position. She has not yet responded. This is being filed because of the urgency of the request.

Dated: September 17, 2018

Respectfully submitted,

JACKSON LEWIS P.C.

By: /s/ Paul T. Trimmer
Paul T. Trimmer
3800 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

CERTIFICATE OF SERVICE

Case Name: MGM GRAND HOTEL, LLC

Case No.: 28-RC-225344

I, Emily Santiago, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 3800 Howard Hughes Pkwy, Suite 600, Las Vegas, NV 89169. I am over the age of eighteen (18) years and am not a party to this action. On September 17, 2018 I electronically filed and electronically served a copy of the foregoing **EMPLOYER'S MOTION** to Region 28 Regional Director Cornele A. Overstreet. In addition, I served additional copies of the objections via email to:

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I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Executed on September 17, 2018, at Las Vegas, NV.

/s/ Paul Trimmer

Paul Trimmer